APPEAL NO. 020199
FILED FEBRUARY 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 28, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, that the claimant did not have disability, and that the respondent (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified the employer of his injury under Section 409.001. The claimant appealed arguing essentially that the hearing officer erred in determining compensability and disability. The respondent (carrier) filed a response urging affirmance.

The determination that the carrier is not relieved from liability under Section 409.002 because the claimant timely notified the employer of his injury under Section 409.001 has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that on _____, he was injured at work when he was bending down to shovel dirt and trash from an excavation site and felt pain to his back as he straightened up. The claimant stated that he did not report his injury to his employer until one week after the date of injury because he was afraid he would be fired from his employment for reporting a work-related injury. The claimant's time sheet in evidence, dated _____, indicates that the claimant completed 8 hours of work and that he acknowledged that he was not injured on the job that day. His time sheets for the rest of the week reflected the same information. An MRI dated March 22, 2001, indicates a "first degree spondylolysthesis," "anterior disc protrusion," and "large right posterolateral herniated nucleus pulposus" at L4-5 and L5-S1. The carrier contends that the claimant sustained an injury to his low back while he was picking up trash at home as evidenced by the medical records dated February 12, 2001, which stated "picking up trash [at] home."

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the course and scope of employment. An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. A "compensable injury" is "an injury that arises out of and in the course and scope of employment . . . ." Section 401.011(10). The hearing officer inferred from the evidence that the claimant's back injury was not sustained at work but at home, and determined that the claimant failed to satisfy his burden of proof. The hearing officer was not persuaded by the claimant's testimony or the medical records in evidence that the claimant sustained a compensable injury in the course and scope of employment on _____. We are satisfied that the hearing officer's injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v.

Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Since we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNETICUT** and the name and address of its registered agent for service of process is

DAN FLANAGAN
S. MOPAC PARKWAY
SUITE A-320
AUSTIN, TEXAS 78745.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge